

EXTENSION OF THE FEDERAL POWER ACT DEADLINE FOR
PROJECT NUMBER 10228 IN KENTUCKY

MARCH 28, 1996.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 2501]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2501) to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Kentucky, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. EXTENSION OF DEADLINE.

(a) **IN GENERAL.**—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 10228, the Commission shall, at the request of the licensee for the project and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project, under the extension described in subsection (b), for not more than 3 consecutive 2-year periods.

(b) **EFFECTIVE DATE.**—This section shall take effect on the date of the expiration of the extension of the period required for commencement of construction of the project described in subsection (a) that the Commission issued, prior to the date of enactment of this Act, under section 13 of the Federal Power Act (16 U.S.C. 806).

PURPOSE AND SUMMARY

The purpose of H.R. 2501 is to extend the deadline for the commencement of construction of a hydroelectric project in the State of Kentucky licensed by the Federal Energy Regulatory Commission (FERC) for up to six years.

BACKGROUND AND NEED FOR LEGISLATION

Section 13 of the Federal Power Act (16 U.S.C. §806 (1988)) establishes time limits for commencement of construction of a hydroelectric project once FERC has issued a license. The licensee must begin construction not more than two years from the date the license is issued, unless FERC extends the initial deadline. However, section 13 permits FERC to grant only one extension of that deadline for "not longer than two additional years * * * when not incompatible with the public interests." Accordingly, FERC lacks authority to extend the deadline beyond a maximum of two years from the original deadline for commencement of construction. Therefore, a license is subject to termination if a licensee fails to begin construction within four years of the date the license is issued.

Lack of a power sales contract is the main reason construction of licensed hydroelectric projects has not commenced. It is very difficult for a hydroelectric project sponsor to secure financing until it has been granted a license, and once it has been granted a license the construction deadline begins to run. Without a power sales contract, a project generally cannot be financed. There are other obstacles to commencement of construction, such as protracted proceedings on a licensee's application for a dredge and fill permit from the Army Corps of Engineers under section 404 of the Clean Water Act. FERC has testified that in such cases it has issued orders staying the license until matters are resolved, suggesting that extension legislation is not needed in order to address delays beyond the control of the licensee. However, this does not apply to delays that are subject to the control of the licensee, such as lack of a power sales contract.

One reason it is difficult for project sponsors to obtain power sales contracts is the changing nature of the electric industry in the United States. As the industry has become more competitive,

utilities are seeking to lower their costs and increase their flexibility. The terms of power sales contracts that finance hydroelectric projects range up to 25 to 30 years, and utilities are trying to avoid purchase agreements with long terms. In addition, the generating cost of these projects may not be as favorable as other alternatives.

H.R. 2501 would extend the deadline for the commencement of construction for an 80 megawatt hydroelectric project (Project No. 10228) for up to a maximum of three consecutive two-year periods. This would extend the deadline to up to ten years after the date the license was issued. The deadline for commencement of construction for Project No. 10228 expired on June 20, 1995, but FERC has not yet terminated the license. According to the project sponsor, construction has not commenced for lack of a power purchase agreement. To date, the licensee has invested about \$300,000 in project development. H.R. 2501 does not ease the requirements of a hydroelectric license, but merely extends the period for commencement of project construction.

The legislation provides for three consecutive two-year extensions, instead of a six-year extension, to assure that the licensee must continue to meet the section 13 requirement that it prosecute construction "in good faith and with due diligence" before obtaining each two-year extension. If FERC determines the licensee is not prosecuting construction in good faith and with due diligence, the Committee expects the agency will refuse to grant a request for an additional two-year extension, terminate the license, and make the site available for other uses.

HEARINGS

The Subcommittee on Energy and Power held a hearing on the general subject of legislative extensions of hydroelectric construction deadlines, as well as specific bills to extend the deadline for individual projects on October 18, 1995. Testimony was received from Ms. Susan Tomasky, General Counsel, Federal Energy Regulatory Commission. There were no legislative hearings held on H.R. 2501, which was introduced after the hearing, but written comments were provided by Ms. Tomasky in a letter to the Subcommittee dated December 11, 1995.

COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power met in open markup session on March 5, 1996, and approved H.R. 2501, as amended, for Full Committee consideration by a voice vote, a quorum being present. The Full Committee met in open markup session on March 13, 1996, and ordered H.R. 2501 reported to the House, as amended, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 2501 reported. A motion by Mr. Bliley to order H.R. 2501 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Energy and Power did not hold a legislative hearing on H.R. 2501. The Subcommittee held a legislative hearing on similar bills on October 18, 1995, received written comments on H.R. 2501 from the Federal Energy Regulatory Commission in a letter to the Subcommittee dated December 11, 1995, and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2501 would result in no new or increased budget authority or tax expenditures or revenue.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 18, 1996.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2501, a bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Kentucky, and for other purposes, as ordered reported by the House Committee on Commerce on March 13, 1996. CBO estimates that enacting the bill would have no net effect on the federal budget. The bill does not contain any intergovernmental or private sector mandates, and would have no direct budgetary impact on state, local, or tribal governments.

The bill would extend the deadline for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). This provision may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the com-

mission charges. Hence, the bill's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 2501 would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of deadline

This section directs FERC, upon the request of the licensee for Project No. 10228, after reasonable notice, and in accordance with the good faith, due diligence, and public interest requirements of section 13 of the Federal Power Act and FERC's procedures under such section, to extend the time required for commencement of construction for such project for up to a maximum of three consecutive two-year periods. The section will take effect upon the date of expiration of the extension previously granted by FERC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the Committee finds that no changes in existing law are made by H.R. 2501.